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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/436,281

11/08/1999

CHARLES ERIC HUNTER

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EXAMINER

PENG, FRED H

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/436,281	<b>Applicant(s)</b> HUNTER, CHARLES ERIC	
	<b>Examiner</b> FRED PENG	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/04/05,05/02/06,10/01/07</u> .                              | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/07/2007 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 15-18 and 20-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walters et al (US 5,440,334) in view of Russo (US 5,619,247) and Palmer (US 5,438,355).

Regarding Claim 15, Walters discloses a system (FIG.3) for distributing movies to customer household, comprising:

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a direct broadcast satellite (DBS) data transmission system blanket transmitting a plurality of encoded movies to customer households at a data transmission rate faster than real time (Col 6 lines 9-12; Abstract);

a user station at each customer household, the user station including means permitting the customer household to preselect desired transmitted movies for recording (FIG.5; Col 9 lines 26-36);

a receiver and associated recording device at each customer household for recording preselected movies at a write speed faster than real time (Col 3 lines 61-67);

a playback device at each customer household for playing back those preselected, recorded movies that the customer household desires to view (Col 4 lines 10-13);

Walters further discloses movies are each transmitted at short intervals at eight to ten times real time or faster, so that a movie may be available for viewing within no more than the interval time plus a transmission/recording time on the order of 11 to 14 minutes or less (Col 12 line 53 – Col 13 line 5) but is not specific about high demand movies during prime time viewing hours.

Official Notice is taken that it is well known in the art that during the prime time viewing hours highly demanded movies are requested.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Walters' system to burst the high demand movies during prime time to serve more customers with available bandwidth.

Walters discloses a central controller system having a database for storing billing information regarding customer's ordered program (Col 12 lines 6-12) but is silent about verifying to the controller system that a preselected, recorded movie has been played back for viewing; and a billing system associated with the central controller system to bill customer households for only those preselected, recorded movies that are played back for viewing.

In an analogous art, Russo teaches billing the customers for the recorded selections and movies that actually played (Col 5 lines 1-10).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Walters' system to charge only when a movie is viewed, as taught by Russo to encourage more viewers to record the programs for later viewing.

Walters and Russo both are silent about a central controller system having a database for storing an address corresponding to each customer household.

In an analogous art, Palmer teaches a central controller system having a database for storing an address corresponding to each customer household (Col 3 lines 33-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined system of Walters and Russo to include a database for storing an address corresponding to each customer household, as taught by Palmer to maintain address and billing information thereby keeping accurate records and efficiently managing data.

Regarding Claim 16, Walters further discloses the recording device at the customer household has a write speed capability on the order of 12 megabits/sec or greater (Col 3 lines 45-51, 61-67; recording device requires corresponding 114 Mbit/sec to record).

Regarding Claim 17, Walters discloses a magneto-optical device can be used for a recording device at the transmission side (Col 8 lines 21-26) but not specifically for a household.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a magneto-optical device for a recording device for a household to take the advantage of better performance from the transmission side.

Regarding Claim 18, Walters further discloses the recording device at the customer household has a write speed capable of recording movies at VHS resolution at eight to ten times real time or faster (Col 3 lines 43-45; 1.5 Mbit/sec playback is about or better than VHS resolution; 114 Mbit/sec corresponding recording speed is much higher than eight to ten times of real time playback).

Regarding Claims 20-22, Walters discloses the user station includes a memory buffer for processing preselected movie data (FIG.3, Memory 330, 300) and the memory buffer including a storage device (300). Walters further discloses a drive selected from magnetic, optical or magneto-optical (Col 8 lines 21-26) and memory means selected from DRAM, flash, SRAM or digital tape (Col 8 lines 21-29) at the transmission end but not specifically for a user station.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a magnetic disk as a storage device and DRAM or flash for memory at the user station to provide the benefits of off-the shelf availability and cost saving.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRED PENG whose telephone number is (571)270-1147. The examiner can normally be reached on Monday-Friday 09:00-18:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fred Peng/  
Patent Examiner

/Son P Huynh/  
Primary Examiner, Art Unit 2623

